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when the corporation was barred by the lapse of two years, under Code 1904, § 571, from correcting the erroneous assessment, to reassess the tobacco on the correct theory that it was intangible property.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Omit.]

Error to Hustings Court of Richmond.

Error to Corporation Court of Danville.

Applications by the American Tobacco Company for relief from local taxes against the City of Richmond and the City of Danville. To review orders for the Cities, the Company brings error. Order as to City of Richmond amended and affirmed; order as to City of Danville reversed.

*L. L. Lewis* and *Jas. E. Cannon*, both of Richmond, for appellant.

*H. R. Pollard*, of Richmond, for appellee City of Richmond.

*E. Walton Brown*, of Danville, for appellee City of Danville.

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JOHNSON et al. v. MERRITT et al.

June 12, 1919.

[99 S. E. 785.]

**1. Judicial Sales (§ 48\*)—Sale to Trustee.**—In suits to subject land to judgment liens, where a trustee for a wife offered to purchase land of the husband, defendant, at \$4 an acre, and his offer was accepted by a decree stating that it made the sale absolute and binding, there was a judicial sale, and on entry of the decree the trustee became the equitable owner of the land and trustee of the purchase money for the husband's heirs, and the husband became equitable owner of the money and the trustee of the legal title to the land for the purchaser, and specific performance could have been enforced by either against the other.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 751.]

**2. Judicial Sales (§ 50 (1\*))—Deed of Commissioner—Estates Conveyed.**—In suits to subject the land to payment of judgment liens, if a trustee for a wife had complied with the terms of a decree accepting his offer to buy land of the husband, defendant, and the court commissioner, pursuant thereto, had conveyed to him, the deed from the commissioner would have conveyed to the trustee all the estate, legal and equitable, of all the parties to the suits in which the decree was entered.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 807.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**3. Judicial Sales (§ 48\*)—Acceptance of Offer to Buy—Effect.**—In suits to subject the land to judgment liens, where the offer of the trustee of a wife to buy land of the husband, defendant, was accepted, but the commissioner died before he made deed to the trustee, the husband at the time of his death was seized of the mere naked legal title to the land, and the court could have compelled him to convey to the trustee on his compliance with the terms of the decree accepting his offer to buy, so that, though the husband's heirs were not parties to the suit until later, they owned no substantial interest as heirs.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 751.]

**4. Limitation of Actions (§ 72 (1)\*)—Statute of Limitations—Infancy.**—By Code 1904, § 2931, an action in no case can be brought after 20 years from the time when the right accrued, despite other saving clauses in favor of infants.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 413.]

**5. Limitation of Actions (§ 5 (1)\*)—Statute of Limitations—Exceptions.**—The right of limitation of actions being wholly statutory, there are no exceptions to the statute except those made by itself.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 412.]

**6. Estoppel (§ 90 (1)\*)—Estoppel in Pais—Investment by Trustee.**—Where an investment in the lands of a husband, defendant in suits to subject them to judgment liens, was made by a trustee for the wife with the husband's full knowledge and approval, neither the husband nor those claiming under him can subsequently deny the investment or the power to make it.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 200.]

**7. Trusts (§ 61 (3)\*)—Discharge of Trust—Conveyance by Trustee.**—Conveyance of land by a wife's trustee, the land having been purchased by the trustee from the husband, defendant in suits to subject the land to judgment liens, to the legatees under the wife's will, at the request or with the consent of all interested, operated as a discharge of the trust, and vested the legatees with title.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 324.]

**8. Partition (§ 109 (1)\*)—Decree—Finality as to Purchasers.**—Where purchasers of land in a partition suit had paid the purchase money into the hands of the officer of the court directed to collect it, if it was lost afterwards from any cause the loss would fall on the parties to receive the money, and not upon the purchasers; the decree directing the sale and conveyance to the purchasers being final in so far as affecting their rights, though the commissioner was directed to report to the court.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 793; 11 Va.-W. Va. Enc. Dig. 162.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**9. Equity (§ 422\*)—Final Decree as to One Party.**—A decree may be final as to one party and not as to another.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 182.]

**10. Equity (§ 422\*)—"Final Decree."**—Two decrees in separate suits held "final," within the definition that a "final decree" is one which disposes of the entire subject matter of contest, leaving nothing to be done in the cause.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Final Decree or Judgment. For other cases, see 8 Va.-W. Va. Enc. Dig. 183.]

**11. Equity (§ 119\*)—Process—Petitions Germane to Bill.**—It was proper to allow to be filed petitions entirely germane to the relief sought by the bill; the parties to whom such petitions were adverse, nonresidents of the state, being proceeded against by order of publication in compliance with Code 1904, § 3232.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 230.]

**12. Judgment (§ 470\*)—Collateral Attack.**—Parties in one suit cannot call in question the correctness of a decree in another suit which confirmed without exception the report of a commissioner.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 545.]

**13. Judgment (§ 501\*)—Validity—Irregularities.**—Where the court had jurisdiction of the subject-matter and of the parties, and the procedure was in the usual equity form, the decrees were not void, however premature or erroneous.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 551.]

**14. Equity (§ 452\*)—Bill of Review—Time to File—Right of Non-residents.**—By Code 1904, § 3233, nonresidents are given three years within which to appear and ask to reopen a decree against them and after the lapse of more than five years from entry of decree a non-resident cannot file her bill of review to set aside and impeach proceedings in a case involving land in which she owns an interest

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 778.]

**15. Equity (§ 427 (3)\*)—Decree—General Prayer.**—A prayer for general relief in a bill claiming under a husband, the claim being antagonistic to a claim under the will of the wife, could not cover claims under her will or under any of her legatees.

**16. Partition (§ 75\*)—Assignment of Whole Tract—Statute.**—Under Code 1904, § 2564, the court trying a partition case had jurisdiction under certain conditions to assign the whole tract to two of the part owners.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 794.]

**17. Appeal and Error (§ 356\*)—Equity (§ 452\*)—Time for Appeal or Bill of Review.**—If litigants permit to elapse, without availing themselves of the remedies provided for their relief, the time fixed

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

by the statute within which appeals may be taken or bills to review filed, they are without remedy.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 501.]

**18. Partition (§ 73\*)—Effect of Decree—Nonresidents—Statute.**—When the parties interested in land sought to be partitioned have been proceeded against by legal methods, there is no difference between the conclusive effect of the decree on residents and nonresidents, except that the latter are given three years, by Code 1904, § 3233, in which to have the case reheard and any injustice corrected.

**19. Action (§ 57 (2)\*)—Consolidation of Causes.**—Causes in which the parties, the subject matter, and relief sought are different, are improperly consolidated.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 135; 1 Va.-W. Va. Enc. Dig. 141.]

Appeal from Circuit Court, Brunswick County.

Suit by W. H. Johnson and another against J. L. Merritt and others. From decree for defendants, plaintiffs appeal. Affirmed.

*Turnbull & Turnbull*, of Lawrenceville, *Irby Turnbull*, of Boydton, *Hardway & Cathey*, of Houston, Tex., and *Litton B. Hickman*, of Nashville, Tenn., for appellants.

*Buford & Peterson*, of Lawrenceville, for appellees.

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CHANDLER *v.* BALTIMORE, C. & A. RY. CO.

June 12, 1919.

[99 S. E. 794.]

**1. Judgment (§ 184\*)—Motion for Judgment—Procedure.**—The procedure by motion for judgment under Code 1904, § 3211, as amended Acts 1916, c. 443, is intended to give plaintiff a simpler, cheaper, and more expeditious mode of procedure than is provided by a regular common-law action and greater laxity has been allowed in the pleadings.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 126; 16 Va.-W. Va. Enc. Dig. 937.]

**2. Judgment (§ 184\*)—Notice of Motion for Judgment—Sufficiency.**—A notice of motion for judgment by shipper against a railroad company, alleging plaintiff delivered a quantity of potatoes for transportation to shipper from Concord, Va., to Pitcairn, Pa., that defendant negligently failed to transport with reasonable dispatch, and that by reason thereof plaintiff sustained damages, held to state sufficiently a cause for recovery, and it is immaterial whether the no-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.